

CIVIL TRACKING ORDER (STANDING ORDER 1- 88)	DOCKET NUMBER 1872CV00390	Trial Court of Massachusetts The Superior Court 
CASE NAME: Wendy Murphy Personal Representative for the Estate of Holly K. Seiler et al vs. Bayada Home Health, Inc. et al		Scott W. Nickerson, Clerk of Court Barnstable County
TO: File Copy		COURT NAME & ADDRESS Barnstable County Superior Court 3195 Main Street Barnstable, MA 02630

#### TRACKING ORDER - A - Average

You are hereby notified that this case is on the track referenced above as per Superior Court Standing Order 1-88. The order requires that the various stages of litigation described below must be completed not later than the deadlines indicated.

#### STAGES OF LITIGATION

#### DEADLINE

	SERVED BY	FILED BY	HEARD BY
Service of process made and return filed with the Court		10/23/2018	
Response to the complaint filed (also see MRCP 12)		11/23/2018	
All motions under MRCP 12, 19, and 20	11/22/2018	12/24/2018	01/22/2019
All motions under MRCP 15	09/18/2019	10/18/2019	10/18/2019
All discovery requests and depositions served and non-expert depositions completed	07/14/2020		
All motions under MRCP 56	08/13/2020	09/14/2020	
Final pre-trial conference held and/or firm trial date set			01/11/2021
Case shall be resolved and judgment shall issue by			07/26/2021

The final pre-trial deadline is not the scheduled date of the conference. You will be notified of that date at a later time.

Counsel for plaintiff must serve this tracking order on defendant before the deadline for filing return of service.

This case is assigned to

DATE ISSUED 07/25/2018	ASSISTANT CLERK Scott W Nickerson	PHONE (508)375-6684
DateTime Printed: 07-25-2018 14:30:17 SCV026, 11/2014		

<b>NOTICE TO ATTORNEY GENERAL OF COMPLAINT ON CHAPTER 93A ACTION</b>		DOCKET NUMBER 1872CV00390	<b>Trial Court of Massachusetts The Superior Court</b>
CASE NAME Wendy Murphy Personal Representative for the Estate of Holly K. Seiler et al vs. Bayada Home Health, Inc. et al		Scott W. Nickerson, Clerk of Court Barnstable County	
Attorney General Consumer Protection Division One Ashburton Place Boston, MA 02108-1698		COURT NAME & ADDRESS Barnstable County Superior Court 3195 Main Street Barnstable, MA 02630	
<p>Pursuant to G.L. c. 93A, § 10, enclosed is a copy of the complaint seeking relief under G.L. c. 93A. The action was filed in this court on 07/25/2018.</p>			
DATE 07/25/2018	CLERK OF COURTS Scott W. Nickerson, Clerk of Court		

CIVIL ACTION COVER SHEET		DOCKET NUMBER 1872CV390	Trial Court of Massachusetts The Superior Court
(s): Wendy Murphy, P.R. of The Estate of Holly K. Seiler, Lincoln Dunlap, Alec Dunlap and Ethan Dunlap		DEFENDANT(S): Bayada Home Health Vital Nutrition, Inc.	COUNTY BARNSTABLE
v: Michael J. Sacchitella 25 Crescent St Brockton, MA 02301		ADDRESS:	SUPERIOR COURT BARNSTABLE, SS
		FILED	JUL 25 2018
<i>[Signature]</i> Clerk			

TYPE OF ACTION AND TRACK DESIGNATION (see reverse side)

CODE NO. <u>B08</u>	TYPE OF ACTION (specify) <u>Wrongful Death</u>	TRACK <u>A</u>	HAS A JURY CLAIM BEING <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
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"please describe:

STATEMENT OF DAMAGES PURSUANT TO G.L. c. 212, § 3A

wing is a full, itemized and detailed statement of the facts on which the undersigned plaintiff or plaintiff counsel relies to determine damages. Disregard double or treble damage claims; indicate single damages only.

**TORT CLAIMS**

(attach additional sheets as necessary)

mented medical expenses to date:

1. Total hospital expenses .....
2. Total doctor expenses .....
3. Total chiropractic expenses .....
4. Total physical therapy expenses .....
5. Total other expenses (describe below) .....

**Subtotal**

mented lost wages and compensation to date .....

mented property damages to date .....

onably anticipated future medical and hospital expenses .....

onably anticipated lost wages .....

documented items of damages (describe below) .....

General Expenses

Describe plaintiff's injury, including the nature and extent of injury:

plaintiffs breached warranties and/or were negligent resulting in conscious pain and suffering and death of Holly K. Seiler.

**CONTRACT CLAIMS**

(attach additional sheets as necessary)

a detailed description of claims(s):

ure of Attorney/Pro Se Plaintiff: X

PED ACTIONS: Please provide the case number, case name, and county of any related actions pending in the

**CERTIFICATION PURSUANT TO SJC RULE 1:18**

I certify that I have complied with requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (2018) requiring that I provide my clients with information about court-connected dispute resolution services and the advantages and disadvantages of the various methods of dispute resolution.

ure of Attorney of Record: X

COMMONWEALTH OF MASSACHUSETTS

Barnstable  
PLYMOUTH

SUPERIOR COURT  
C.A. No.:

1872CV390

SUPERIOR COURT  
BARNSTABLE, SS  
FILED JUL 25 2018  
*Scott Niles Clerk*

WENDY MURPHY, )  
As Personal Representative )  
Of the Estate of HOLLY K. )  
SEILER, LINCOLN DUNLAP, )  
ALEC DUNLAP and ETHAN )  
DUNLAP, )  
Plaintiffs )  
)  
v. )  
)  
BAYADA HOME HEALTH, INC. )  
And VITAL NUTRITION, INC )  
Defendants )  
)

COMPLAINT AND JURY DEMAND

PARTIES

1. The Plaintiff, Wendy Murphy is the duly appointed Personal Representative of the Estate of Holly K. Seiler and resides in East Falmouth, Barnstable County, Massachusetts.
2. The Plaintiff, Lincoln Dunlap at all times material hereto has been the son of Holly Dunlap and resides in Abington, Plymouth County, Massachusetts.
3. The Plaintiff, Alec Dunlap, at all times material hereto has been the son of Holly Dunlap and resides in Austin, Texas.
4. The Plaintiff, Ethan Dunlap, at all times material hereto has been the son of Holly Dunlap and resides in Cambridge, Middlesex County, Massachusetts.
5. Upon information and belief, the Defendant, Bayada Home Health, Inc. is a corporation duly organized with a principal place of business located at 20N Park Avenue, Suite 1300, Plymouth, Plymouth County, Massachusetts 02360.

6. Upon information and belief, the Defendant Vital Nutrition, Inc. is a corporation duly organized with a principal place of business located at 358 Gifford Street, Falmouth, Barnstable County, Massachusetts 02540.

COUNT ONE  
NEGLIGENCE—BAYADA HOME HEALTH, INC.

7. The Plaintiff re-alleges paragraphs 1 through 6 and incorporates the same herein by reference.
8. In or about 2016 the defendant Bayada Home Health, Inc. was engaged in the business of providing aides to the elderly and infirm. Said aides were not medical personnel and were not to provide any medical treatment or assistance.
9. At said time, said defendant assigned an aide to care for Holly K. Seiler while she was a resident at Atria Woodbriar, an assisted living and memory care facility located at 339 Gifford Street, Falmouth, MA.
10. Also at said time, Holly K. Seiler was suffering from several medical conditions, including Parkinson's Disease. Holly K. Seiler relied upon said defendant to provide an aide that was competent.
11. Said aide was not permitted or licensed to provide any medical treatment or assistance to Holly K. Seiler.
12. In or about April 2016, the defendant's aide, while furthering the business of said defendant, negligently purchased or assisted in the purchase of hydrogen peroxide for Holly K. Seiler and thereafter was negligent in assisting in administering said chemical to Holly K. Seiler.
13. Said conduct was negligent and as a result Holly K. Seiler was caused to suffer conscious pain and suffering and death on July 19, 2016 and other damages.

14. The negligent conduct of said aide is attributable to said defendant pursuant to the legal theory of respondeat superior.

WHEREFORE, the plaintiff demands judgment against said defendant in an amount to be determined by this litigation together with interest and costs.

COUNT II

NEGLIGENCE--BAYADA HOME HEALTH, INC.

15. The Plaintiff re-alleges paragraphs 1 through 14 and incorporates the same herein by reference.

16. The defendant Bayada Home Health, Inc. was negligent in the hiring, training and supervision of said aide.

17. As a result of said negligence, Holly K. Seiler was caused to suffer conscious pain and suffering and death and other damages.

WHEREFORE, the plaintiff demands judgment against said defendant in an amount to be determined by this litigation together with interest and costs.

COUNT III

WILLFUL, WANTON, RECKLESS CONDUCT—BAYADA HOME HEALTH, INC.

18. The Plaintiff re-alleges paragraphs 1 through 17 and incorporates the same herein by reference.

19. The conduct of said defendant's aide, while acting in furtherance of said defendant's business, was undertaken in a willful, wanton and reckless and/or grossly negligent fashion and recklessly failed to take necessary precautions concerning the care of Holly K. Seiler which said defendant knew or should have known would result in serious harm and/or death.

20. As a result of said defendant's willful, wanton and reckless conduct and/or gross negligence, Holly K. Seiler suffered serious injury to her health, suffered great pain of body and mind and thereafter died therefrom.

21. This count is for conscious pain and suffering and is brought on behalf of the Estate of Holly K Seiler.

WHEREFORE, the plaintiff demands judgment against said defendant in an amount to be determined by this litigation together with interest and costs.

COUNT IV

WRONGFUL DEATH—BAYADA HOME HEALTH, INC.

22. The Plaintiff re-alleges paragraphs 1 through 21 and incorporates the same herein by reference.

23. Holly K. Seiler is survived by next of kin.

24. This count is for wrongful death brought by Wendy Murphy as Personal Representative of the Estate of Holly K. Seiler on behalf of the next of kin of Holly K. Seiler.

WHEREFORE, the plaintiff Wendy Murphy, as Personal Representative of the Estate of Holly K. Seiler demands judgment against said defendant in an amount to be determined by this litigation together with interest and costs.

COUNT V

PUNITIVE DAMAGES

25. The plaintiff re-alleges paragraphs 1 through 24 and incorporates them herein by reference.

26. The conduct and behavior of said defendant in the care of Holly K. Seiler and failing to take necessary precautions concerning said care, which said defendant knew or should have known would result in serious harm and/or death to Holly K. Seiler, constitute gross

negligence and/or willful, wanton or reckless conduct within the meaning of M.G.L. chapter 229 section 2.

27. As a result of said defendant's gross negligence and/or willful, wanton or reckless conduct Holly K. Seiler was caused to suffer severe personal injuries and great pain to body and mind which resulted in her death.

28. As a result of the foregoing, the plaintiff is entitled to recover punitive damages in an amount that is just and appropriate for said gross negligence and/or willful, wanton or reckless conduct of said defendant that resulted in the death of Holly K. Seiler.

WHEREFORE, the plaintiff Wendy Murphy as Personal Representative of the Estate of Holly K. Seiler pursuant to M.G.L. chapter 229 section 2 of the Massachusetts Wrongful Death Act demands that judgment be entered against said defendant for punitive damages and all other damages recoverable under said statute, together with interest, costs, attorney's fees and such other relief as this honorable court may deem appropriate.

#### COUNT VI

##### LOSS OF CONSORTIUM—LINCOLN DUNLAP

29. The plaintiff re-alleges paragraphs 1 through 28 and incorporates them herein by reference.

30. As a result of the negligence of said defendant Bayada Home Health, Inc. the plaintiff Lincoln Dunlap suffered the loss of companionship, society and consortium of his mother Holly K. Dunlap and other damages.

WHEREFORE, the plaintiff Lincoln Dunlap demands that judgment enter against said defendant in an amount to be determined by this litigation together with interest and costs.

COUNT VII

LOSS OF CONSORTIUM—ALEC DUNLAP

31. The plaintiff re-alleges paragraphs 1 through 30 and incorporates them herein by reference.
32. As a result of the negligence of said defendant Bayada Home Health, Inc. the plaintiff Alec Dunlap suffered the loss of companionship, society and consortium of his mother Holly K. Dunlap and other damages.
- WHEREFORE, the plaintiff Alec Dunlap demands that judgment enter against said defendant in an amount to be determined by this litigation together with interest and costs.

COUNT VIII

LOSS OF CONSORTIUM—ETHAN DUNLAP

33. The plaintiff re-alleges paragraphs 1 through 32 and incorporates them herein by reference.
34. As a result of the negligence of said defendant Bayada Home Health, Inc. the plaintiff Ethan Dunlap suffered the loss of companionship, society and consortium of his mother Holly K. Dunlap and other damages.
- WHEREFORE, the plaintiff Ethan Dunlap demands that judgment enter against said defendant in an amount to be determined by this litigation together with interest and costs.

COUNT IX

BREACH OF WARRANTY—VITAL NUTRITION, INC.

35. The Plaintiff re-alleges paragraphs 1 through 34 and incorporates the same herein by reference.

36. At all times material hereto, the Defendant Vital Nutrition, Inc. manufactured, distributed, advertised, sold, and/or represented the chemical hydrogen peroxide as a health aid for individuals.
37. Said Defendant warranted by express warranties, and warranties implied by law that the said hydrogen peroxide was of merchantable quality fit for the particular purpose for which it was obtained and that the product was safe and free of defects. In fact, however, the said hydrogen peroxide was not merchantable, was not fit for the particular purpose for which it was obtained, was not safe and was defective.
38. During 2016, while in the Commonwealth of Massachusetts, the deceased, Holly K. Seiler was a person said Defendant would expect to use or be affected by the said hydrogen peroxide.
39. As a result of the breach of express and implied warranties by said Defendant of the said hydrogen peroxide, Holly K. Seiler suffered severe personal injury, suffered great pain of body and mind; was obliged to expend substantial sums of money for medical care and attendance and was prevented from transacting her affairs, suffered a loss of quality of life, as well as a loss of future earning capacity and permanent injury to her, including her death.
- WHEREFORE, the Plaintiff demands that judgment enter against said Defendant in an amount to be determined by this litigation, together with interest and costs.
- COUNT X
- NEGLIGENT FAILURE TO WARN—VITAL NUTRITION, INC.
40. The Plaintiff re-alleges paragraphs 1 through 39 and incorporates the same herein by reference.

41. The Defendant Vital Nutrition, Inc. had a duty to warn of latent dangers arising from normal and intended use of hydrogen peroxide.
42. During 2016, while in the Commonwealth of Massachusetts, the deceased Holly K. Seiler was a person the Defendant would expect to use or be affected by the said hydrogen peroxide.
43. Said Defendant failed to adequately warn of the dangers involved in the use of the said hydrogen peroxide; said Defendant should have become aware of the dangers involved in the use of hydrogen peroxide; and said Defendant failed to notify the deceased, Holly K. Seiler of the dangers involved and/or remove the dangerous product.
44. As a result, Holly K. Seiler suffered severe personal injury, suffered great pain of body and mind; was obliged to expend substantial sums of money for medical care and attendance and was prevented from transacting her affairs, suffered a loss of quality of life, as well as a loss of future earning capacity and permanent injury to her, including her death.

WHEREFORE, the Plaintiff demands that judgment enter against said Defendant in an amount to be determined by this litigation, together with interest, costs and a trial by jury on all issues.

COUNT XI

NEGLIGENCE—VITAL NUTRITION, INC.

44. The Plaintiff re-alleges paragraphs 1 through 43 and incorporates the same herein by reference.
45. The Defendant Vital Nutrition, Inc. had a duty of care which includes eliminating or minimizing known or reasonably known dangerous conditions of hydrogen peroxide.

46. Said Defendant, negligently manufactured, distributed and/or failed to adequately warn of the dangers involved with the use of the said product known as hydrogen peroxide.
47. As a result of the negligence of said Defendant, Holly K. Seiler suffered severe personal injury, suffered great pain of body and mind; was obliged to expend substantial sums of money for medical care and attendance and was prevented from transacting her affairs, suffered a loss of quality of life, as well as a loss of future earning capacity and permanent injury to her, including her death.

WHEREFORE, the Plaintiffs demands that judgment enter against said Defendant, in an amount to be determined by this litigation, together with interest, costs and a trial by jury on all issues.

COUNT XII

VIOLATION OF MGL CHAPTER 93A—VITAL NUTRITION, INC.

48. The Plaintiff re-alleges paragraphs 1 through 47 and incorporates the same herein by reference.
49. The conduct of the Defendant Vital Nutrition, Inc. as set forth above was intentional, willful, illegal, and violated the warranties of merchantability and fitness for a particular purpose. In addition, its advertising was false, deceptive and intentionally misleading. Each of the foregoing constitute a violation of M.G.L. chapter 93A.
50. The plaintiffs served a demand letter upon said defendant pursuant to M.G.L. chapter 93A. Exhibit "A". The defendant responded without tendering an offer of settlement. Exhibit "B".
51. As a result, Holly K. Seiler suffered severe personal injury, suffered great pain of body and mind; was obliged to expend substantial sums of money for medical care and

attendance and was prevented from transacting her affairs, suffered a loss of quality of life, as well as a loss of future earning capacity and permanent injury to her, including her death.

WHEREFORE, the Plaintiffs respectfully demand judgment against the Defendant, in an amount to be determined by this litigation, trebled, together with reasonable attorneys' fees, interest, costs and a trial by jury on all issues.

COUNT XIII

LOSS OF CONSORTIUM—LINCOLN DUNLAP

52. The plaintiff re-alleges paragraphs 1 through 50 and incorporates them herein by reference.

53. As a result of the negligence of said defendant Vital Nutrition, Inc. the plaintiff Lincoln Dunlap suffered the loss of companionship, society and consortium of his mother Holly K. Dunlap and other damages.

WHEREFORE, the plaintiff Lincoln Dunlap demands that judgment enter against said defendant in an amount to be determined by this litigation together with interest and costs.

COUNT XIV

LOSS OF CONSORTIUM—ALEC DUNLAP

54. The plaintiff re-alleges paragraphs 1 through 52 and incorporates them herein by reference.

55. As a result of the negligence of said defendant Vital Nutrition, Inc. the plaintiff Alec Dunlap suffered the loss of companionship, society and consortium of his mother Holly K. Dunlap and other damages.

WHEREFORE, the plaintiff Alec Dunlap demands that judgment enter against said defendant in an amount to be determined by this litigation together with interest and costs.

COUNT XV

LOSS OF CONSORTIUM—ETHAN DUNLAP

56. The plaintiff re-alleges paragraphs 1 through 54 and incorporates them herein by reference.

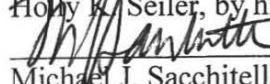
57. As a result of the negligence of said defendant Vital Nutrition, Inc. the plaintiff Ethan Dunlap suffered the loss of companionship, society and consortium of his mother Holly K. Dunlap and other damages.

WHEREFORE, the plaintiff Ethan Dunlap demands that judgment enter against said defendant in an amount to be determined by this litigation together with interest and costs.

**JURY CLAIM**

THE PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL ISSUES RAISED IN THIS COMPLAINT.

The Plaintiff, Wendy Murphy as Personal Representative of the Estate of Holly K. Seiler, by his attorney,

  
Michael J. Sacchitella, Esquire (BBO #437070)  
Tufankjian, McDonald, Welch & Sacchitella  
25 Crescent Street  
Brockton, MA 02301  
508-583-3939  
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